

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

September 18, 2024
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: NM
DEPUTY

BRUCE SMITH)
Plaintiff)
v.) CIVIL NO. SA-23-CV-538-OLG
THE UNIVERSITY OF TEXAS AT)
SAN ANTONIO, THE UNIVERSITY OF)
TEXAS SYSTEM, JOANN BROWNING,)
THOMAS TAYLOR EIGHMY, and)
THE UNIVERSITY OF TEXAS SYSTEM)
BOARD OF REGENTS)
Defendants)

ORDER

On this date, the Court considered the report and recommendation of United States Magistrate Judge Elizabeth S. Chestney, filed in the above-styled and numbered cause on August 21, 2024. Docket no. 37. Plaintiff and the Board of Regents have filed partial objections. Docket nos. 39, 40. The Court has conducted a *de novo* review of the objected to portions of the recommendation. *See* 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(3). The remainder of the recommendation has been reviewed for clear error.

After such review, the Court finds that the report and recommendation should be ACCEPTED, with one modification: Plaintiff must amend his complaint within 14 days from the date below to substitute the names of the individual members of the Board of Regents in their official capacities. *See* docket no. 37, p. 23. As the Magistrate Judge correctly noted, the Board of Regents as an entity is immune and although Plaintiff has expressed an intent to sue the individual members, he must name them. Plaintiff's pleading must be clear for the remaining

claim to move forward.¹

It is therefore ORDERED that the Magistrate Judge's recommendation (docket no. 37) is ACCEPTED AS MODIFIED; Defendants' motions to dismiss (docket nos. 19, 29) are GRANTED IN PART and DENIED IN PART; and all claims except the FMLA retaliation claim for injunctive relief against the individual members of the Board of Regents in their official capacities are DISMISSED for the reasons stated in the recommendation.²

SIGNED on the 18 day of September, 2024.



ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

¹No other changes to the pleading are permitted.

²The only injunctive relief sought is reinstatement, which is decided by the Court.